

Account Number: 8912014  
Account Name: UST - OGM - Wright/Garrf Resources, LLC.  
Tran #: 16717989  
Admin Name: Raylyn Daniel - UST 801-844-8523  
Date: 08/23/2010

50430032

110011599

Internal

This check constitutes payment of the following:

Escrow Disbursements  
final release of acct #

Paid For:

Amount: \$21,221.58

110011599

Payee:

OGM - Wright/Garrf Resources, LLC  
c/o Utah State Treasurer  
350 N State Street Ste 180  
PO Box 142315  
Salt Lake City UT 84114-2315

HARLAND CLARKE M17873 10139532

THIS DOCUMENT CONTAINS A TRUE WATERMARK - HOLD TO LIGHT TO VIEW

OFFICIAL CHECK

110011599

Zions First National Bank  
Salt Lake City, Utah  
801-844-7089

UST - OGM - Wright/Garrf Resources, LLC

Trust Account 8912014

8/23/2010

\$21,221.58\*

Twenty One Thousand Two Hundred Twenty One Dollars & 58/100

Pay to the Order Of:

OGM - Wright/Garrf Resources, LLC  
c/o Utah State Treasurer  
350 N State Street Ste 180  
PO Box 142315  
Salt Lake City UT 84114-2315



Details on Back.

Security Features Included.



STATE OF UTAH  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION of OIL, GAS and MINING  
1594 West North Temple, Suite 1210  
Box 145801  
Salt Lake City, Utah 84114-5801  
(801) 538-5291  
Fax: (801) 359-3940



---ooOoo---

**SMALL MINE RECLAMATION CONTRACT**

This Reclamation Contract (hereinafter referred to as "Contract") is entered into between **Wright/Garff Resources, LLC** the "Operator" and the Utah State Division of Oil, Gas and Mining ("Division").

WHEREAS, Operator desires to conduct mining operations under Notice of Intention (NOI) File No. **S/043/032** which the Operator has filed with the Division and has been determined by the Division to be complete (Complete NOI) as required by the Utah Mined Land Reclamation Act, Sections 40-8-1 et seq., Utah Code Annotated, (2005, as amended) (hereinafter referred to as "Act") and the regulations adopted pursuant to the Act; and

WHEREAS, Operator is obligated to reclaim the lands affected by the mining operations in accordance with the Act and the regulations, and is obligated to provide a surety in a form and amount approved by the Division or the Board of Oil, Gas and Mining (Board) to assure reclamation of the lands affected by the mining operations.

NOW, THEREFORE, the Division and the Operator agree as follows:

1. Operator agrees to promptly reclaim in accordance with the requirements of the Act and applicable regulations, as they may be amended, all of the lands affected by the mining operations conducted or to be conducted pursuant to a Complete Notice of Intention.
2. The Lands Affected by the mining operations and subject to the requirements of the Act and this Contract include:
  - A. All surface and subsurface areas affected or to be affected by the mining operations including but not limited to private on-site ways, roads, railroads; land excavations; drill sites and



ponds or dumps; work, parking, storage, and waste discharge areas, structures, and facilities; and

- B. All mining disturbances regardless of discrepancies in the map and legal description, unless explicitly and clearly identified as EXCLUDED on maps, and legal descriptions included in the Complete NOI; provided lands may be excluded only if: (1) they were disturbed by mining operations that ceased prior to July 1, 1977; (2) the lands would be included but have been reclaimed in accordance with a complete notice or reclamation plan; or (3) the lands were disturbed by a prior operation for which there is no surety, no legally responsible entity or person, and which lands are not necessarily or incidentally intended to be affected by the mining operations as described in the Complete NOI.
- 3. The Operator shall be responsible for reclamation of all such Lands Affected regardless of errors or discrepancies in the maps or legal descriptions provided with the NOI which are intended to assist in determining the location of the mining operations, to describe the areas of disturbance, and to assist estimating the amount of surety required.
  - 4. The Operator prior to commencement of any mining operations and as a precondition to the rights under the Notice of Intention shall provide a surety in a form permitted by the Act and in an amount sufficient to assure that reclamation of the Lands Affected will be completed as required by the Act. The Surety shall remain in full force and effect according to its terms unless modified by the Division in writing. A copy of the agreement providing for the Surety for the reclamation obligations herein is included as **ATTACHMENT A** to this Contract.
  - 5. If the Surety expressly provides for cancellation or termination for non-renewal:
    - A. The Operator shall within 60 days following the Division's receipt of notice that the Surety will be terminated or cancelled, provide a replacement Surety sufficient in a form and amount, as required by the Act, to replace the cancelled surety; or
    - B. If the Operator fails to provide an acceptable replacement Surety within 60 days of notice of cancellation or termination, the Division may order the Operator to cease further mining activities, and without further notice proceed to draw upon letters of credit, to withdraw any amounts in certificates of deposit or cash and/or any other forms of surety, and to otherwise take such action as may be necessary to secure the rights of the Division to perfect its claim on the existing surety for the purpose of fully satisfying all of the reclamation obligations incurred by the Operator prior to the date of termination, and the Division may thereafter require the

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Operator to begin immediate reclamation of the Lands Affected by the mining operations, and may, if necessary, proceed to take such further actions as may be required for the Division to forfeit the surety for the purpose of reclaiming the Lands Affected.

6. The Operator's liability under this Contract shall continue in full force and effect until the Division finds that the Operator has reclaimed the Lands Affected by mining operations in accordance with the Act and regulations, as amended. If the mining operations are modified or for any other reason vary from those described in the Complete Notice of Intention, the Operator shall immediately advise the Division, and the Notice of Intention shall be revised and the Surety amount shall be adjusted as necessary.
7. If reclamation of a substantial phase or segment of the Lands Affected by the mining operations is completed to the satisfaction of the Division, and the Division finds that such substantial phases or segments are severable from the remainder of the mining area, Operator may request the Division to find that Operator has reclaimed such area. If the Division makes such finding, Operator may make request to the Division for a reduction in the aggregate face amount of the Surety, and the Division may reduce the surety to an amount necessary to complete reclamation of the remaining mining operations as anticipated by the Complete Notice of Intention in accordance with the requirements of the Act and regulations, as amended.
8. Operator may, at any time, submit a request to the Division to substitute surety. The Division may approve such substitution if the substitute surety meets the requirements of the Act and the applicable rules.
9. Operator agrees to pay all legally determined public liability and property damage claims resulting from mining operations, to pay all permit fees, to maintain suitable records, to file all required reports, to permit reasonable inspections, and to fulfill all sundry reporting requirements applicable to the mine as required by the Act and implementing rules.
10. Operator agrees to indemnify and hold harmless the State, Board, and the Division from any claim, demand, liability, cost, charge, suit, or obligation of whatsoever nature arising from the failure of Operator or Operator's agents and employees, or contractors to comply with this Contract.
11. If Operator shall default in the performance of its obligations hereunder, Operator shall be liable for all damages resulting from the breach hereof including all costs, expenses, and reasonable attorney's fees incurred by the Division and/or the Board in the enforcement of this Contract.
12. Any breach of a material provision of this Contract by Operator may, at the discretion of the Division, in addition to other remedies available to it, result in an order by the Division requiring the Operator to cease mining operations, and may thereafter result in an Order, subject to an opportunity



for notice and hearing before the Board, withdrawing and revoking the Notice of Intention, and requiring immediate reclamation by the Operator of the Lands Affected or forfeiture of the Surety.

13. In the event of forfeiture of the Surety, Operator shall be liable for any additional costs in excess of the surety amount that is required to comply with this Contract. Upon completion of the reclamation of all of the Lands Affected, any excess monies resulting from forfeiture of the Surety shall be returned to the rightful claimant.
14. The Operator shall notify the Division immediately of any changes in the Operator's registered agent, the Operator's address, form of business, name of business, significant changes in ownership, and other pertinent changes in the information required as part of the Notice of Intention. Notwithstanding this requirement, any changes to the Notice of Intention, and any errors, omissions, or failures to fully or accurately complete or update the information on the Notice of Intention, or the attached maps, shall not affect the validity of this Contract and the rights of the Division to enforce its terms.
15. If requested by the Division, the Operator shall execute addendums to this Contract to add or substitute parties, or to reflect changes in the Operator, Surety, and otherwise modify the Contract to reflect changes in the mining operations as requested by the Division. All modifications must be in writing and signed by the parties, and no verbal agreements, or modifications in any of the terms or conditions shall be enforceable.
16. This Contract shall be governed and construed in accordance with the laws of the State of Utah.

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The signatory below represents that the Operator, if not a natural person, is a properly organized entity in good standing under the laws of Utah and the United States, is registered as an entity authorized to do business in the State of Utah, and that he/she is authorized to execute this Contract on behalf of the entity as Operator.

OPERATOR:

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Wright/Garff Resources, L.L.C.

Operator Name

By Edward B. Rogers

Authorized Officer (Typed or Printed)

Manager

Authorized Officer - Position

Edward B. Rogers, manager

Officer's Signature

1/16/08

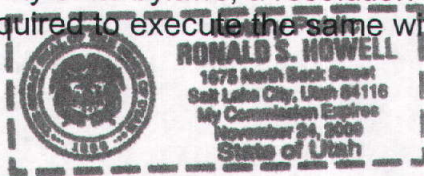
Date

STATE OF Utah )

) ss:

COUNTY OF Summit )

On the 16<sup>th</sup> day of January, 2008, Edward B. Rogers personally appeared before me, who being by me duly sworn did say that he is a Manager of the Operator Wright/Garff Resources, L.L.C. and duly acknowledged that said instrument was signed on behalf of said Operator by authority of its bylaws, a resolution of its board of directors or as may otherwise be required to execute the same with full authority and to be bound hereby.



Ronald S. Howell

Notary Public

Residing at Salt Lake City Utah

11/24/09

My Commission Expires:



DIVISION OF OIL, GAS AND MINING:

By John R. Baza  
John R. Baza, Director

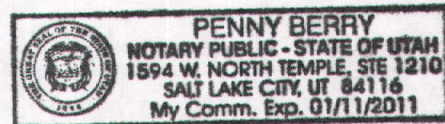
1/24/08  
Date

STATE OF Utah)  
COUNTY OF Salt Lake) ss:

On the 24 day of January, 2008, John R. Baza  
personally appeared before me, who being duly sworn did say that he, the said  
John R. Baza is the Director of the Division of Oil, Gas and Mining,  
Department of Natural Resources, State of Utah, and he duly acknowledged to me that  
he executed the foregoing document by authority of law on behalf of the State of Utah.

Penny Berry  
Notary Public  
Residing at: Salt Lake

1/11/2011  
My Commission Expires:



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## FACT SHEET

**Commodity:** Sandstone

**Mine Name:** Wright/Garff Resources LLC

**Permit Number:** S/043/032

**County:** Summit

**Disturbed Acres:** 5

**Operator Name:** Wright/Garff Resources LLC

**Operator address:** 1675 Beck Street SLC, UT 84116

**Operator telephone:** 801-983-8000

**Operator fax:** 801-328-0955

**Operator email:** ebrmgt@yahoo.com

**Contact:** Ed Rogers

**Surety Type:** Cash

**Held by (Bank/BLM):** Chase Bank

**Surety Amount:** \$20,700

**Surety Account Number:** n/a

**Escalation Year:** 2010

**Tax ID or Social Security (for cash only):** \_\_\_\_\_

**Surface owner:** FEE

**Mineral owner:** FEE

**UTU and/or ML number:** N/A

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HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

**CHASE** 

Utah

**OFFICIAL CHECK**

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

075181226 16-3717  
1220

Date 01/10/2008

Remitter WRIGHT/GRAFF RESOURCES LLC

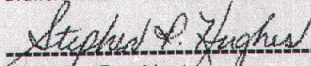
Pay: TWENTY THOUSAND SEVEN HUNDRED DOLLARS AND 00 CENTS

\$ \*\*\*\*\*20,700.00 \*\*\*

Pay To The  
Order Of

UTAH STATE TREASURER

Drawer: JPMORGAN CHASE BANK, N.A.

  
First Vice PresidentIssued by Integrated Payment Systems Inc., Englewood, Colorado  
Wells Fargo Bank Ltd., Los Angeles, CaliforniaSecurity  
Features  
Details on  
Back

51043/0032





CHASE

OFFICIAL CHECK

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

075181226

16-3717  
1220

Date 01/10/2008

Utah

Remitter WRIGHT/GRAFF RESOURCES LLC

Pay: TWENTY THOUSAND SEVEN HUNDRED DOLLARS AND 00 CENTS

Pay To The Order Of UTAH STATE TREASURER

\$ \*\*\*\*\*20,700.00 \*\*\*

Drawer: JPMORGAN CHASE BANK, N.A.

*Stephen P. Hughes*  
First Vice President

Issued by Integrated Payment Systems Inc., Englewood, Colorado  
Wells Fargo Bank Ltd., Los Angeles, California



Security  
Features  
Details on  
Back

ORIGINAL CHECK  
ROUTED TO ACCOUNTING

5430032

RECEIVED

JAN 10 2008

DIV. OF OIL, GAS & MINING

Cash RECEIPT

Date

1/18/08

MINERALS BOND \$20,700.00

Amount \$	
Permit Number	5/043/032
Operator	Wright/Graff Resources, LLC
Received by	Kristina Pearson
Signature	I confirm the dollar amount of this check is correct <i>KP</i>

☒ APPROVED





GARY R. HERBERT  
Governor

GREGORY S. BELL  
Lieutenant Governor

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil, Gas and Mining

JOHN R. BAZA  
Division Director

August 3, 2010

Ann Pedroza  
State of Utah, Office of State Treasurer  
E315 State Capitol Complex  
Post Office Box 142315  
Salt Lake City, Utah 84114-2315

Subject: Authorization for Release of Cash Deposit Held by Utah State Treasurer, Wright/Garff Resources LLC, Wright/Garff Resources LLC Mine, S/043/0032, Summit County, Utah

Dear Ms. Pedroza:

The Utah State Treasurer is presently holding funds for the benefit of the State of Utah, Division of Oil, Gas and Mining as a form of reclamation surety for the following project:

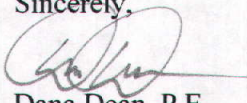
Permit ID	Mine Name	BOND AMOUNT			OPERATOR Check payable to	Account Number
		Total Amount Held	Release Amount Requested	Amount to be Retained		
S/043/0032	Wright Garff Resources	\$20,700	\$20,700	\$0	Wright/Garff Resources LLC	

Please note that the total amount to be released is to include interest accrued in this account. No money is to be retained in the account.

Please make the check payable to the operator, Wright/Garff Resources LLC, and remit the funds to the Division, attention: Minerals Regulatory Program—Bond Coordinator.

If you have any questions or require further discussion regarding this letter, please contact Penny Berry, bond coordinator, at 801-538-5291, or by e mail at [bondcoordinator@utah.gov](mailto:bondcoordinator@utah.gov).

Sincerely,

  
Dana Dean, P.E.  
Associate Director

DD:lah:pb

cc: Wright Garff Resources LLC – Ed Rogers

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January 22, 2008

TO: File

FROM: Lynn Kunzler, Senior Reclamation Specialist 

SUBJECT: Reclamation Contract, Wright/Garff Resources, LLC., Wright Garff Resources, LLC Mine, S/043/032, Summit County, Utah

Pursuant to the Order of the Board regarding Docket No. S/043/030, M/043/012, Cause No. 2007-011, entered on October 5, 2007, Wright/Garff Resources, LLC submitted a complete Notice of Intention to Conduct Small Mining Operations to the Division on January 4, 2008 (Item B and C of the Order). They have also provided cash in the amount of \$20,700 for the reclamation surety (for this 5- acre site) and a Reclamation Contract for Division approval.

According to Items B and D of the Order , the Division will require Star Stone Quarries, to revise their Notice within 45 days to accommodate the approved Notice of Wright/Garff. The Division will make the approval of the Wright/Garff NOI effective 45 days from now.



**FILED**

OCT 05 2007

SECRETARY, BOARD OF  
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

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**IN THE MATTER OF THE REQUEST  
FOR AGENCY ACTION OF WRIGHT  
GARFF RESOURCES REQUESTING  
BOARD REVIEW OF THE  
DIVISION'S DENIAL OF A SMALL  
MINE PERMIT WITHIN THE AREA  
PRESENTLY COVERED BY THE  
LARGE MINE PERMIT OF STAR  
STONE QUARRIES INC., M/043/012,  
SUMMIT COUNTY, UTAH**

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER**

**Docket No. S/043/030, M/043/012  
Cause No. 2007-011**

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This cause came on regularly for hearing before the Board of Oil, Gas and Mining (the "Board") on Wednesday, July 25, 2007 at 10:00 a.m., in the Hearing Room of the Utah Department of Natural Resources at 1594 West North Temple Street, in Salt Lake City, Utah.

The following Board members were present and participated in the hearing: Chairman Douglas E. Johnson, Kent R. Petersen, Robert J. Bayer; Jean Semborski and Ruland J. Gill, Jr.

Steven A. Wuthrich appeared as counsel for Wright/Garff Resources, and Ed Rogers testified as a witness for Wright/Garff. Ronald S. George appeared as counsel for Respondent Star Stone Quarries, Inc., and Lon Thomas testified as a witness for Star Stone. Steven F. Alder, Assistant Attorney General, appeared as counsel for the Division of Oil, Gas and Mining (the "Division"). Darren Haddock, Environmental Manager/Permit Supervisor, and Susan White,



Environmental Manger/Mining Program Coordinator, testified as witnesses for the Division. Michael S. Johnson, Assistant Attorney General, represented the Board.

**NOW THEREFORE**, the Board, having fully considered the testimony adduced and the exhibits received at the hearing<sup>1</sup>, being fully advised, and good cause appearing, hereby makes and enters the following Findings of Fact, Conclusions of Law, and Order:

### FINDINGS OF FACT

1. Notices of the time, place, and purpose of the July 25, 2007 hearing were mailed to all interested parties, and were duly published in newspapers of general circulation pursuant to the requirements of Utah Administrative Code ("U.A.C.") Rule R641-106-100 (2005). Copies of the Request for Agency Action were likewise mailed to all interested parties pursuant to U.A.C. Rule R641-104-135.

2. Petitioner Wright/Garff Resources, L.L.C. ("WG") is a Utah limited liability company and is the owner of 95.5 percent of the mineral interest underlying the area known as Lot 38 (see below). The Bureau of Land Management own the mineral estate to an approximately 3.5 acre portion of Lot 38.

3. Lon Thomas and Associates, Inc., a Utah corporation, owns the surface estate to Lot 38. Lon Thomas and Associates, Inc. has leased the surface estate of Lot 38 to Respondent Star Stone Quarries, Inc. ("SSQ"), a Utah corporation and affiliated entity.

4. The division of surface and mineral ownership set forth in the preceding two paragraphs was represented by the parties at the hearing to have been confirmed through a

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<sup>1</sup> The post-hearing affidavits of the parties concerning the rock crusher were submitted after the close of evidence and were not considered by the Board. The issue addressed in those affidavits was not critical to the Board's decision.



January 13, 1997 judgment entered in the Third Judicial District court in Civil No. 94-03-00111.

5. On November 6, 2000, the Division approved a notice of intention ("NOI") to commence large mining operations submitted by SSQ (this approved NOI is hereinafter referred to as the "Permit"). SSQ submitted the NOI to mine sandstone/building stone. The Permit covers approximately 40 acres, of which SSQ may disturb approximately 27 acres. The SSQ permit covers a parcel of land referred to by the parties as Lot 38.

6. In 1996, and again in 2000, WG leased its mineral estate to SSQ. SSQ also obtained a mineral lease from the BLM covering the 3.5-acre portion of Lot 38 in which WG has no interest. During the term of WG's lease to SSQ, SSQ excavated a quarry to extract minerals from the WG mineral estate. The extraction activities created a highwall, pad, and waste dump which will have to be reclaimed.

7. On October 31, 2005, the mineral lease granted SSQ by WG terminated and was not renewed. While the Permit allows SSQ to extract minerals from that portion of the permit area covered by WG's mineral estate, due to the loss of the underlying lease, SSQ no longer has that right. SSQ has not filed any Notice of Intention to Revise Large Mining Operations to reflect the loss of its lease from WG.

8. Under the Permit and SSQ's lease from the BLM, SSQ continues to have the right to extract minerals from the 3.5-acre BLM parcel. While SSQ's lease of the WG minerals has terminated, the Permit in its present form still allows SSQ to conduct other "mining operations" on the surface estate overlying the WG minerals. SSQ presently stores, splits and palletizes rock on that acreage.

9. In August of 2006, WG submitted a small mine NOI to develop its own mineral



estate. WG wishes to mine the quarry previously excavated by SSQ and to remove certain piles of previously mined materials located on the site. The five acres WG proposes to mine in its NOI are located on Lot 38 and entirely within the boundaries of the existing SSQ Permit.

10. Because SSQ already holds a permit covering Lot 38, the Division declined to process the WG NOI. WG appealed this determination, asking the Division to withdraw or modify the SSQ Permit to accommodate the WG proposal. WG appealed this decision informally to the Division Director. On May 3, 2007, the Division Director, pursuant to R647-5-105, converted the appeal from an informal appeal to a formal appeal to be heard by the Board.

11. In addition to the pre-existing SSQ Permit covering the same ground, the Division noted several other problems with the WG NOI. First, the five acres covered by the WG NOI are comprised of several non-contiguous areas, complicating both access to these noncontiguous areas as well as the orderly carrying out of reclamation responsibilities on the noncontiguous areas and on the connecting property under the existing SSQ Permit. For these reasons, as noted by the Division, the existing WG NOI does not present a realistic mine proposal that would allow for adequate reclamation.

12. The Division has further noted that WG had initially stated it was unwilling to assume the entire reclamation responsibility for its proposed mine site and would require SSQ to reclaim its share of the disturbance. At the hearing, however, WG amended its position and stated that it would indeed assume the entire reclamation responsibility for its proposed mine site regardless of who was responsible for disturbances thereon.

13. All parties agree that dual permitting (the granting of a permit to WG which overlaps the existing SSQ Permit) is not feasible in this case due to, among other factors,



hostility between WG and SSQ which would preclude the kind of cooperation necessary for dual permitting to work.

14. SSQ is presently dumping material over the highwall of the quarry with the intention of using the material for reclamation. These actions will make it difficult, if not impossible, for WG to mine the existing quarry under any approved NOI.

#### **CONCLUSIONS OF LAW**

15. Due and regular notice of the time, place, and purposes of the July 25, 2007 hearing was given to all interested parties in the form and manner and within the time required by law and the rules and regulations of the Board. Due and regular notice of the filing of the Request for Agency Action was given to all interested parties in the form and manner and within the time required by law and the rules and regulations of the Board.

16. The Board has jurisdiction over the parties and subject matter of this Request for Agency Action pursuant to Chapters 6 and 8 of Title 40 of the Utah Code Annotated, and has the power and authority to make and promulgate the order herein set forth.

17. The mineral estate is recognized to be the dominant estate, with the surface estate being subservient to the degree necessary to allow the mineral estate owner to extract his/her minerals. Thus, as the owner of the mineral estate, WG possesses the right to make certain uses of the surface estate as reasonably necessary to the development of its minerals. Such right to use the surface to develop the mineral estate was recognized by the Third District Court in the January 13, 1997 summary judgment ruling in the litigation between SSQ and WG referenced in paragraph 4 of the Findings, above.

18. The Division has a duty under the Utah Mined Land Reclamation Act and



implementing regulations to ensure that a WG NOI, if approved, will allow for full reclamation. Hence, if in the Division's judgment WG's previously-submitted NOI is not conducive to adequate reclamation given its inclusion of noncontiguous areas, and is unrealistic in its failure to address disturbances associated with access to the site, the Division has the authority to require changes to such NOI prior to approval.

19. Utah Code Ann. §40-8-18(1)(a) requires that "an operator conducting mining operations under an approved notice of intention shall submit to the division a notice of intention when revising mining operations." *See also* Utah Admin. Code R647-4-118.1. Because SSQ's mineral lease from WG terminated and SSQ no longer extracts minerals from the WG mineral estate, its mining operations have changed significantly and it must under the statute submit a Notice of Intention to Revise Large Mining Operations. The revision shall incorporate changes necessary to accommodate WG's utilization of its own mineral estate through its proposed mining activity.

20. Any failure by SSQ to hereafter file a Notice of Intention to Revise Large Mining Operations as required by Utah Code Ann. §40-8-18(1)(a) and by this Order will constitute a violation of the requirements of Chapter 8 of Title 40 and may subject SSQ to possible civil penalties pursuant to Utah Code Ann. §40-8-9.1, cessation orders pursuant to Utah Code Ann. §40-8-9(3)(c), and criminal charges pursuant to Utah Code Ann. §40-8-9(1).

21. While SSQ has a continuing right to the benefits and use of its Permit, that permit was issued subject to, and remains subject to, the controlling statutes and regulations. *See* Utah Code Ann. §40-8-17(1). As discussed below, such statutes and regulations provide for the Division's authority to require a revision/modification of the Permit when warranted.



22. The Division has "jurisdiction and authority over all persons and property, both public and private, necessary to enforce" the provisions of the Utah Mined Land Reclamation Act. Utah Code. Ann. 40-8-5(1)(a). Additionally, the regulations expressly provide that "the Division may review [a] permit and require updated information and modifications when warranted." Utah Admin. Code §647-4-102. In addition, the Division possesses implied powers necessary to carry out these enumerated powers. *See Bennion v. ANR Production Co.*, 819 P.2d 343, 350 (Utah 1991). *See also* cases cited in SSQ's Reply to Brief of Wright/Garff Resources at 2-3. The Division therefore has the authority, in light of the termination of SSQ's lease and WG's intention to mine its own minerals, to require a modification of the SSQ Permit to reflect changed circumstances and to accommodate any NOI filed by WG which the Division might approve.

23. Such modification will allow WG to develop its own mineral estate while leaving intact SSQ's ability to mine the minerals from the 3.5-acre BLM parcel and to continue to use the great majority of the remainder of Lot 38 within the existing Permit area for its splitting, crushing, storing, selling and other activities, as well as to conduct necessary reclamation activities.

### **ORDER**

#### **IT IS THEREFORE ORDERED that:**

- A. WG's Petition is granted in part, and denied in part, as follows:
- B. The Board upholds the Division's refusal to process the existing WG NOI both because of the existence of the conflicting SSQ Permit and because of the problematic, non-contiguous nature of the proposed operations. The issue of the conflicting SSQ Permit can be



addressed through a revision of that Permit as discussed in greater detail below. Before the SSQ Permit can be revised to accommodate WG's proposed plan, however, WG must submit a new NOI which the Division deems adequate which proposes a logical mine plan covering contiguous areas and which ensures that adequate reclamation is possible. The new NOI shall accommodate continued operations on SSQ's large mine permit.

C. In accordance with its representations at the hearing in this matter, WG shall assume full responsibility for reclaiming all disturbed areas within the area covered by its NOI regardless of whether it, SSQ, or any other party created such disturbances. WG must present to the Division appropriate surety guaranteeing that it will perform the reclamation for its proposed operations. Once the Division is satisfied with WG's form and amount of surety, it will release SSQ's bond for the area covered by the WG NOI.

D. The Board orders, and directs the Division to require pursuant to its authority discussed in paragraph 22, above, that SSQ file a Notice of Intention to Revise Large Mining Operations to modify its Permit to reflect the loss of its mineral lease from WG and to make accommodation for WG's use of the acreage covered by any amended WG NOI approved by the Division. SSQ shall make such filing within 45 days of the date of the Division's determination that WG has submitted an adequate NOI as discussed in paragraph B, above. The Division shall notify SSQ when this has occurred. In the event SSQ fails to file such a Notice, the Division is directed to use its powers under Utah Code Ann. §§40-8-9(3) and 9.1 (concerning civil penalties and cessation orders) to compel compliance. The Board further notes that failure to file the Notice as required by statute and this Order may constitute a class B misdemeanor pursuant to Utah Code Ann. §40-8-9(1). In addition to employing these penalties and sanctions, in the event



SSQ fails to file an appropriate revision document, the Division may petition the Board to consider imposing other sanctions, including withdrawal/revocation of the SSQ permit, pursuant to the Board's general powers.

E. The Board orders, and directs the Division to require, that SSQ temporarily cease dumping materials over the highwall of the quarry or any other portion of the proposed WG mine site until any new NOI filed by WG is acted upon. If approval of a WG NOI results in the highwall being included within the area of a WG permit, and reclamation responsibilities for such highwall are assumed by WG, SSQ shall not thereafter engage in any further dumping of material over the highwall.

F. The Board makes no ruling on ownership of existing rock piles, boulders or other already-mined minerals which may be located on the subject property. Any dispute regarding ownership of such property must be resolved by the parties in state court or another tribunal with jurisdiction over such ownership issues.

G. The Board has considered and decided this matter as a formal adjudication, pursuant to the Utah Administrative Procedures Act, Utah Code Ann. §§ 63-46b-6 through -10, and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641.

H. This Findings of Fact, Conclusions of Law, and Order ("Order") is based exclusively upon evidence of record in this proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, as required by the Utah Administrative Procedures Act, Utah Code Ann. § 63-46b-10, and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code



R641-109; and constitutes a final agency action as defined in the Utah Administrative Procedures Act and Board rules.

**I. Notice of Right of Judicial Review by the Supreme Court of the State of Utah.** As required by Utah Code Ann. §63-46b-10(e) to -10(g), the Board hereby notifies all parties to this proceeding that they have the right to seek judicial review of this Order by filing an appeal with the Supreme Court of the State of Utah within 30 days after the date this Order is entered. Utah Code Ann. § 63-46b-14(3)(a) and -16.

**J. Notice of Right to Petition for Reconsideration.** As an alternative, but not as a prerequisite to judicial review, the Board hereby notifies all parties to this proceeding that they may apply for reconsideration of this Order. Utah Code Ann. § 63-46b-13. The Utah Administrative Procedures Act provides:

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Utah Code Ann. § 63-46b-13.



The Rules of Practice and Procedure before the Board of Oil, Gas and Mining entitled "Rehearing and Modification of Existing Orders" state:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10<sup>th</sup> day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15<sup>th</sup> day of that month.

Utah Admin. Code R641-110-100.

See Utah Administrative Code R641-110-200 for the required contents of a petition for rehearing. The Board hereby rules that should there be any conflict between the deadlines provided in the Utah Administrative Procedures Act and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the aggrieved party may seek judicial review of the order by perfecting an appeal with the Utah Supreme Court within 30 days thereafter.

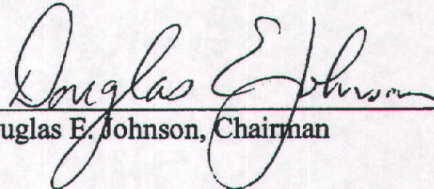
K. The Board retains exclusive and continuing jurisdiction of all matters covered by this Order and of all parties affected thereby; and specifically, the Board retains and reserves exclusive and continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.

L. The Chairman's signature on a facsimile copy of this Order shall be deemed the equivalent of a signed original for all purposes.



ENTERED this 5 day of October, 2007.

STATE OF UTAH  
BOARD OF OIL, GAS AND MINING

  
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Douglas E. Johnson, Chairman

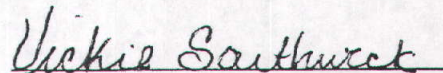
**CERTIFICATE OF MAILING**

I hereby certify that I mailed a true and correct copy of the foregoing FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND ORDER via United States mail, postage prepaid, this  
10 day of October, 2007, to the following:

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Vickie Southworth